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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 120620179-2179-01]

Request for Public Comments on Shipping Tolerances for Export Licenses Issued by the Bureau of Industry and Security.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: Numerous exporters have expressed interest in establishing an automatic calculation through the Automated Export System (AES) of the shipping tolerance for licenses issued by the Bureau of Industry and Security (BIS) to enhance exporter compliance with the Export Administration Regulations (EAR). In addition, automatic calculation would assist in achieving the goals of the President's Export Control Reform (ECR) initiative to harmonize the control lists of the Departments of Commerce and State, and with the transfer of militarily less significant defense articles from the United States Munitions List (USML) to the Commerce Control List (CCL), by making the transfer smoother for exporters since automatic calculation of shipping tolerances is already in place for the primary licenses issued by the Department of State (DSP-5 licenses). BIS seeks public comment to help it ascertain if changes should be made to its

shipping tolerance regulations in order to make automatic calculation in AES feasible. BIS is particularly interested in whether a flat percentage should be applied to the dollar value of all controlled items to calculate shipping tolerance or whether another method of calculation should be employed.

DATES: Comments must be received no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted via e-mail to teresa.telesco@bis.doc.gov . Please refer to “Shipping Tolerance of Export Licenses” in the subject line. Comments may also be sent to Shipping Tolerance Study, Office of Technology Evaluation, Room 1093, U.S Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Teresa Telesco, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202-482-4959; fax: 202-482-5361; e-mail: teresa.telesco@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

BIS, among its other activities, issues licenses for the export of items that are subject to the Export Administration Regulations (EAR). Under some circumstances defined in the EAR, exporters are allowed to export more than the quantity or dollar value shown on an export

license. This additional amount is called a shipping tolerance. Currently, the allowable shipping tolerance is calculated based on the “unit” specified in the Export Control Classification Number (ECCN); the three basic “units” are “dollar value,” “number,” or “area, weight or measure” (see §750.11). Depending on the applicable “unit,” BIS allows either no shipping tolerance on dollar value, or up to 25 percent shipping tolerance on dollar value. The Department of State, which issues licenses for commodities identified on the USML, measures shipping tolerances based on dollar value. The Department of State applies a flat 10 percent shipping tolerance on dollar value to all defense articles.

The President’s Export Control Reform (ECR) initiative aims to harmonize, to the maximum extent possible, the control lists of the United States Munitions List (USML) and Commerce Control List (CCL). With the anticipated transfer of items determined to no longer warrant control under the USML to the CCL, which are largely generic parts and components, harmonization of the two agencies’ shipping tolerance regulations and the ability to automatically calculate available shipping tolerance in the Automated Export System (AES) may be beneficial, because they could make the transfer easier and less confusing for exporters.

BIS is looking into the feasibility of adding to the Automated Export System (AES) a feature that automatically calculates the shipping tolerance of the dollar value on an export license, communicates the dollar value remaining on the license back to the AES filer, and notifies the AES filer when the license has been fully utilized. This feature is also known as electronic decrementation of a license, and is already in place on AES for the primary licenses issued by the Department of State (DSP-5 licenses). This feature would enhance compliance with licenses and

increase transparency of export licensing by providing precise and timely information to exporters on what they are allowed to export under the license in the future. In addition, electronic decrementation would assist with the ECR harmonization goal, as well as the anticipated control of some munitions items under the CCL, by providing exporters of CCL items with the same functionality in AES already available to exporters of USML items.

BIS is seeking information that would help it determine:

- If the current EAR shipping tolerance rules should be maintained or if changes should be made that facilitate automatic calculation;
- If the EAR shipping tolerance rules were changed, (i) should BIS continue to exclude certain ECCNs from having an allowable shipping tolerance, (ii) should the dollar value-based shipping tolerance be set at 10 percent to match the Department of State rules; and
- Whether an automatic calculation of the dollar value-based shipping tolerance in AES (electronic decrementation) would assist exporters in maintaining compliance with the allowable shipping dollar value of the license.

The following kinds of information would be useful to BIS's assessment:

- Detailed information on your company's experiences with both the Department of State's and BIS's shipping tolerance regulations;
- Detailed information on how dollar value-based shipping tolerances are beneficial and practical, or detrimental and burdensome to your company or organization;

- Detailed information on your company's experience with automatic calculation of a dollar value-based shipping tolerance (decrementation) against State Department licenses in AES;
- If you believe that BIS's dollar value-based shipping tolerances should be changed, detailed information on how the tolerances should be changed; and
- Detailed information on what benefits, if any, industry would receive through electronic decrementation of a dollar value-based shipping tolerance in AES.

How to Comment

All comments must be in writing and submitted to one of the addresses indicated above.

Comments must be received by BIS no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

Dated: June 27, 2012

Kevin J. Wolf,

Assistant Secretary for Export Administration

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